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ENGLISH LAW'S APPROACH TO CRYPTOASSETS AND SMART CONTRACTS

The UK Jurisdiction Taskforce carried out a consultation earlier this year to identify the key questions that needed to be answered about English law's approach to cryptoassets and smart contracts.

Following input from relevant stakeholders, including ourselves, UKJT published its legal statement on the 18 November 2019.

We have simplified the statement into a table below which we hope will help to answer any questions you have.

Question	Answer	So what?
CRYPTOASSETS		
Can a cryptoasset be property?	Yes	Important in bankruptcy, insolvency and in cases of fraud or theft.
Can a cryptoasset be physically possessed?	No	You cannot take a lien (ie keep possession until a debt is paid) over a cryptoasset nor can you sue someone for conversion of it (ie wrongfully dealing with it).
Can a cryptoasset be a "document of title" (a document, like a bill of lading, that enables the person holding it to deal with the property described as if they were the owner)?	No	The law may benefit from reform. To a degree you can achieve the same ends using contract law.
Are cryptoassets "negotiable" (so a good faith purchaser can acquire good title)?	Not at the moment	Probably not an issue.
Are cryptoassets goods?	No	They will not get protection relating to sale of goods.
Are cryptoassets information?	No (though the private key is)	If they were it would mean that they were not property.
Can you grant security over a cryptoasset?	Yes but not by way of a pledge or contractual lien	The ability to grant security is important to realising the value in cryptoassets.
Are cryptoassets "property" for the purposes of insolvency law?	Yes	This benefits the creditors of the insolvent entity.
What if no governing law has been chosen?	This is one of the hardest questions to answer and ultimately requires new law and international cooperation eg via the EU or the Hague Conference	You need to know the governing law to understand what rules apply. The current rules do not fit easily with something that is truly decentralised like Bitcoin. Where there is a contract, the parties should agree the governing law.
Can a distributed ledger be an official register of title like the Land Register?	Not without new law	This is something that is being debated but ultimately would require Government action.

Question	Answer	So what?
SMART CONTRACTS		
Can smart contracts be binding?	Yes, in the same way that any agreement that meets the requirements of a legal contract.	This is unsurprising.
How would a court interpret a smart contract?	In the same way as any other contract. Though expert evidence may be necessary	This is unsurprising.
Can you have a contract with anonymous or pseudo-anonymous parties?	Yes – there is no requirement to know a party's true identity	There may still be practical difficulties in identifying who to sue if things go wrong. It is possible to get orders against "Persons Unknown".
Can a private key amount to a signature?	Yes	This is important since some transfers have to be signed.
Is a smart contract that is wholly in code, in writing?	Probably, at least if it is in operating code (the human readable form)	Source code is more problematic since it is generally not seen as being human readable.



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